

FILED

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

2008 JUN 27 A 10:49

E-FILING

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ATUL MALHOTRA,

Defendant.

CR - 08 00423

VIOLATION: 18 U.S.C. § 1832(a)(2) -
Theft of Trade Secrets

SAN JOSE VENUE

JF

HRL

INFORMATION

The United States Attorney charges:

At all times relevant to this Information:

Background

1. International Business Machines Corporation ("IBM"), headquartered in Armonk, New York, was a multinational corporation engaged in the business of information technology. IBM's outsourcing and other businesses involve various IBM and non-IBM products, including computer servers, networking equipment, workstations, printers, software, and other items. These products were sold and shipped, and intended to be sold and shipped, in interstate and foreign commerce.

1 2. Hewlett Packard Company ("HP"), headquartered in Palo Alto, California, was a
2 competitor of IBM.

3 3. During on or about November 17, 1997 to on or about April 28, 2006, defendant Atul
4 Malhotra was employed by IBM as Director, Sales and Business Development, Output Management
5 Services, IBM Global Services. In that position, defendant Atul Malhotra was responsible for
6 leading a team that developed bids and sold Output Managed Services (management of printers and
7 other output devices) to customers, including as a component of larger IBM strategic outsourcing
8 engagements. As an IBM employee, defendant Atul Malhotra agreed to abide by company terms and
9 policies to maintain the confidentiality of proprietary information and to avoid the disclosure of any
10 trade secrets to any third party.

11 4. On or about March 15, 2006, while employed at IBM, defendant Atul Malhotra
12 requested and received confidential information concerning IBM Global Services, CC Calibration
13 Metrics, which was marked "IBM Confidential" on each page. This information was a trade secret
14 in that IBM took reasonable measures to keep the information secret; and the information derived
15 independent economic value, actual or potential, from not being generally known to, and not being
16 readily ascertainable through proper means by, the public. In providing the requested information,
17 a Pricing Coordinator at IBM Global Services directed defendant Atul Malhotra: "given the
18 sensitive nature of the material please do not distribute."

19 5. In or about May 2006, defendant Atul Malhotra became HP Vice President of
20 Imaging and Printing Services.

21 6. On or about July 25, 2006, defendant Atul Malhotra sent an e-mail to an HP Senior
22 Vice President with the subject, "For Your Eyes Only," and attached the IBM Global Services, CC
23 Calibration Metrics.

24 7. On or about July 27, 2006, defendant Atul Malhotra sent an e-mail to another HP
25 Senior Vice President with the subject, "For Your Eyes Only - confidential," and attached the IBM
26 Global Services, CC Calibration Metrics.

27 // // //

28 // // //

COUNT ONE: (18 U.S.C. § 1832 - Theft of Trade Secrets)

8. On or about July 25, 2006, in the Northern District of California, and elsewhere,
the defendant

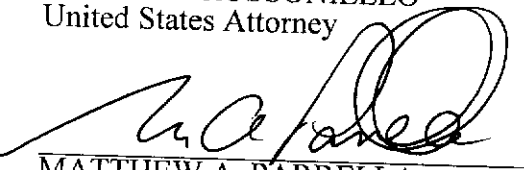
ATUL MALHOTRA


with intent to convert a trade secret to the economic benefit of someone other than the owner thereof, specifically, IBM Global Services, CC Calibration Metrics, which trade secret was related to, and included in, products that were produced for and placed in interstate and foreign commerce, did, without authorization copy, duplicate, download, upload, photocopy, replicate, transmit, deliver, send, mail, communicate, and convey such information, and attempt to do so, and intending and knowing that his possession, appropriation or communication would injure IBM, the owner of the trade secret.

All in violation of Title 18, United States Code, Sections 1832(a)(2).

Dated: June 27, 2008

JOSEPH P. RUSSONIELLO
United States Attorney


MATTHEW A. PARRELLA
Chief, San Jose Branch

(Approved as to form: )

AUSA SUSAN KNIGHT
AUSA MARK L. KROTOSKI

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 1832(a)(2) - Theft of Trade Secret

E-FILING

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

10 years imprisonment, \$250,000 fine, 5 years supervised release, \$100 special assessment

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
 FBI - Special Agent William Ng

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW
DOCKET NO.

MAGISTRATE
CASE NO.

Name and Office of Person
Furnishing Information on
THIS FORM

JOSEPH P. RUSSONIELLO

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y
(if assigned)

Susan Knight & Mark Krotoski

Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

FILED

2008 JUN 21 A 10:49

DEFENDANT: U.S.
 ATHUL MALHOTRA
 RICHARD W. WIEKING

CLERK
 U.S. DISTRICT COURT NUMBER
 NO. DIST. OF CA. S.J.

CR - 08 00423

JF

DEFENDANT

IS NOT IN CUSTODY

HRL

1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction

6) ☐ Awaiting trial on other charges

☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

PROCESS:

ADDITIONAL INFORMATION OR COMMENTS

☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____